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10/568,617	02/16/2006	Peter Wolfgang	60291.000045	9357

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EXAMINER
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KIRSCH, ANDREW THOMAS

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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09/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,617	<b>Applicant(s)</b> WOLFGANG ET AL.	
	<b>Examiner</b> ANDREW T. KIRSCH	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/27/2009</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Specification***

1. The objections to the specification have been removed in light of the amendment.

### ***Claim Objections***

2. The objection to claim 9 has been removed in light of the amendment.

### ***Claim Rejections - 35 USC § 112***

3. The rejections under 35 USC § 112 have been removed.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5, 8-12, 14-15, 17, 20-24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. PG Pub No. 2002/0050493 (Ball et al. hereinafter).
6. In re claim 1, with reference to Figs. 12 and 13 below, Ball et al. discloses: A lever ring (16) for seaming to a body and for receiving a closure layer (28) affixed with an edge portion by sealing (46) and for bridging an inner space of the lever ring, to close the body in a seam-connected position (page 9, paragraph [0095]), wherein (i) the lever ring comprises a continuous flat web (30) which radially outwardly merges into an edge rim (see Fig. 12) of the lever ring, a continuous surrounding groove (see Fig. 12) extending between the edge rim and the flat web; (ii) the flat web is suitable for affixing the edge portion of the closure layer by sealing (page 6, paragraph 73), and extends at

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an angle (see Fig. 12) differing from zero (page 7, paragraph 76) with respect to a plane of the closure layer (28) affixed by said sealing.

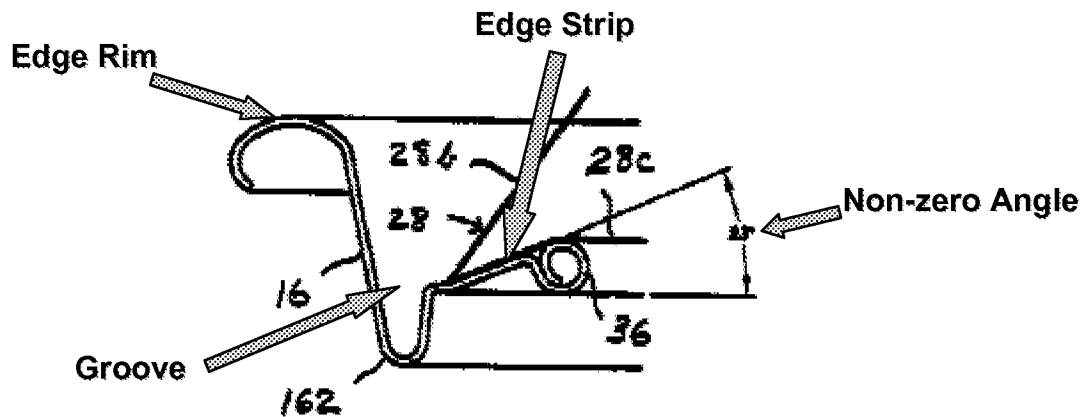


FIG. 12

Fig. 12 of U.S. PG Pub No. 2002/0050493 (Ball et al. hereinafter)

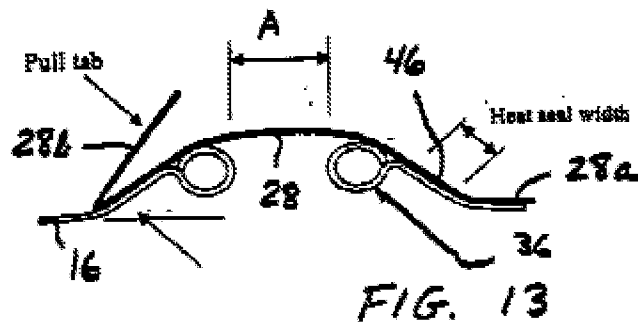


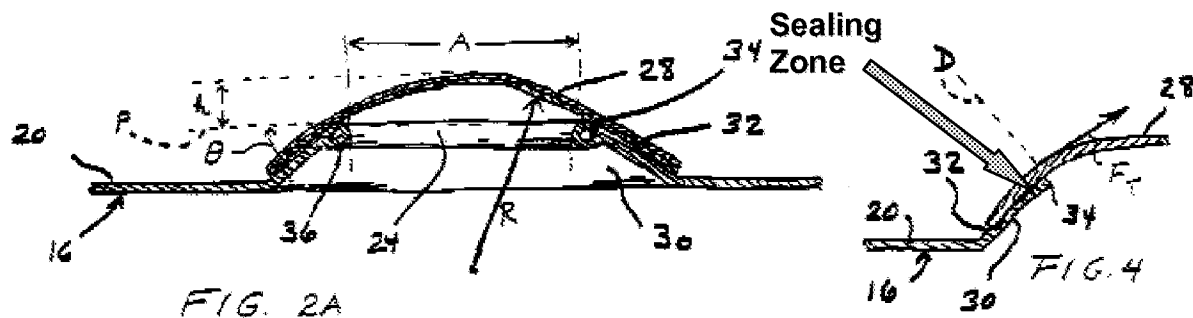
FIG. 13

Fig. 13 of U.S. PG Pub No. 2002/0050493 (Ball et al. hereinafter)

7. In re claim 2, with reference to Figs. 12 and 13 above and 2A and 4 below, Ball et al. discloses: A lever ring (16) for seaming to a body and for receiving a closure layer (28) affixed with an edge portion thereof by sealing (46) and for bridging an inner space of the lever ring, to close the body in a seam-connected position (page 9, paragraph [0095]), wherein (i) the lever ring comprises a continuous flat web (30) which radially

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outwardly continues into an edge rim (see Fig. 12) of the lever ring, a continuous groove (see Fig. 12) extending between the edge rim and the flat web; (ii) the flat web (30) extends upwardly inclined from a horizontal plane at an angle differing from zero and is provided with an inner curling (36) on its radially inner end so that a closure layer (28) sealed to the flat web and subjected to a pressure force acting vertically to a plane of extension of the closure layer introduces a substantial force component ( $F_T$ ) into a sealing zone (46), so that the force component extends in an extension direction of the sealing zone (page 7, paragraph 84).



**Figs. 2A and 4 of U.S. PG Pub No. 2002/0050493 (Ball et al. hereinafter)**

8. In re claims 3 and 15, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the angle differing from zero is between substantially  $10^\circ$  and substantially  $90^\circ$  (see Fig. 12: " $23^\circ$ ").

9. In re claims 5 and 17, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the angle ( $\alpha_2$ ) is between substantially  $25^\circ$  and  $35^\circ$  (page 7, paragraph 76).

10. In re claim 8, with reference to Figs. 2A, 4 and 13 above, Ball et al. discloses the claimed invention including wherein said receiving and sealing of the closure layer (28)

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is a sealing of an edge portion of the closure layer in a sealing zone (46) the flat web (30).

11. In re claim 9, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the flat web (30) comprises radially inwards an inner curling (36).

12. In re claims 10 and 22, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the closure layer (28) extends over the inner curling (36) and is thereby deflected (ü) so that an edge strip (see Fig. 12) is formed, which extends at an angle differing from zero (see Fig. 12), with respect to the plane of the closure layer (28) in the inner space of the lever ring.

13. In re claims 11 and 23, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the closure layer (28) is formed as a membrane made of one or more materials selected from a group consisting of: plastic, sheet metal, metal foil, and compound foil (page 6, paragraph 73).

14. In re claim 12, with reference to Fig. 13 above, Ball et al. discloses the claimed invention including wherein the sealing zone as a strip extending circumferentially (46) has a substantial width of extension on the flat web (30), the width being more than half a width of the flat web (see Fig. 13 above).

15. In re claim 14, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the groove (see Fig. 12) is wedge-shaped with a rounded bottom and is formed between a chuck wall extending towards the surrounding lid rim (2) and the surrounding inclined flat web (30).

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16. In re claim 20, with reference to Figs. 2A, 4 and 13 above, Ball et al. discloses the claimed invention including wherein said receiving and sealing of the closure layer (28) is a sealing of an edge portion of the closure layer to a circumferential (page 6, paragraph 74) sealing strip (46) on the flat web (30).

17. In re claim 24, with reference to Fig. 13 above, Ball et al. discloses the claimed invention including wherein sealing strip extending circumferentially (46) has a substantial width on the flat web (30), this width being more than half of a width of the flat web.

18. In re claim 26, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the groove (see Fig. 12) is of a wedge-shape having a rounded bottom and is formed between a chuck wall extending towards the lid rim (2) and the flat web (30) extending at an angle differing from zero.

### ***Claim Rejections - 35 USC § 103***

19. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

22. Claims 4, 6-7, 16, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ball et al.

23. In re claims 4 and 16, with reference to the Figures above, Ball et al. discloses the claimed invention except wherein the angle ( $\alpha_2$ ) is between substantially 40° and 60°.

24. However, Ball et al. teaches that slope angle of the flange (flat web) should be chosen to be sufficiently large so as to be compatible with the bulging characteristic of the chosen closure member material (page 7, paragraph 85).

25. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have interpreted the teaching of Ball et al. and realized various angles based on the selection of the closure layer (28) material. This teaching alludes to the relationship between the closure layer material and angle under circumstances



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that would require a larger or steeper angle even though Ball et al. only discloses a range of angles from "about 12.5 degrees" to "about 30 degrees."

26. In re claims 6 and 18, with reference to the Figures above, Ball et al. discloses the claimed invention except wherein the angle ( $\alpha_2$ ) is between substantially 80° and 90°.

27. However, as described above, Ball et al. teaches a relationship between the closure layer material and the angle of the flat web (page 7, paragraph 85).

28. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have interpreted the teaching of Ball et al. and realized various angles based on the selection of the closure layer (28) material. It would not have been unreasonable to have arrived at an angle between substantially 80 and 90 degrees based on the selection of material for the closure layer as well as the internal pressure characteristic of the desired stored contents which relates directly to the peeling and tensile forces imparted on the closure layer (page 7, paragraph 83).

29. In re claims 7 and 19, with reference to the Figures above, Ball et al. discloses the claimed invention except wherein the angle differing from zero extends substantially vertically to the extension of the plane of the closure layer (28).

30. However, as described above, Ball et al. teaches a relationship between the closure layer material and the angle of the flat web (page 7, paragraph 85).

31. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have interpreted the teaching of Ball et al. and realized various angles based on the selection of the closure layer (28) material. It would not have been

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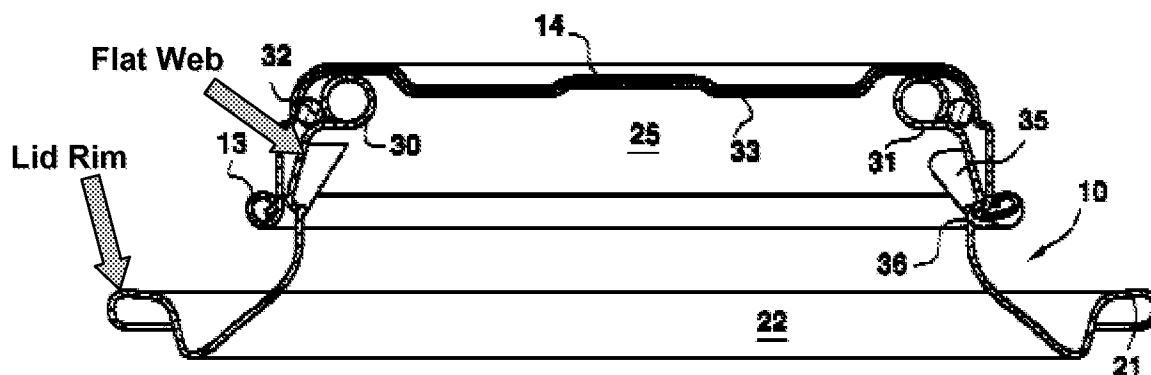
unreasonable to have arrived at an angle between substantially 80 and 90 degrees (i.e.: substantially vertical) based on the selection of material for the closure layer as well as the internal pressure characteristic of the desired stored contents which relates directly to the peeling and tensile forces imparted on the closure layer (page 7, paragraph 83).

32. Claims 13 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ball et al. as applied to claims 1 and 2 above, and further in view of U.S. Patent No. 6,082,944 (Bachmann et al. hereinafter).

33. In re claims 13 and 25, with reference to the Figures above, Ball et al. discloses the claimed invention including an alignment of the flat web that projects steeply upwards.

34. Ball et al. fails to disclose wherein the inner curling (at the flat web) axially projects above an upper side/level of the lid rim.

35. However, with reference to Fig. 2 below, Bachmann et al. discloses a can end configuration with a removable closure layer (14), in which an inner curling (30) axially projects above an upper side/level of the lid rim (see Fig. 2).

**FIG.2**

**Fig. 2 of U.S. Patent No. 6,082,944 (Bachmann et al. hereinafter)**

36. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the curl of Ball et al. to be elevated in relation to the upper side/level of the lid rim as taught by Bachmann et al. Such a modification would have allowed for improved mouth construction for better pouring and drinking comfort (column 2, lines 15-23).

***Response to Amendment***

37. The amendment filed 6/18/2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: in claim 8 “which sealing zone extends circumferentially along with the edge rim of the lever ring”. The disclosure was previously silent to the extent to which the sealing zone was defined on the lever ring. Examiner had previously interpreted “circumferentially” when referring to the sealing seam/zone as being around the circumference of the opening, and the edge rim as being around the circumference of the device. This new limitation in claim 8 however requires that both the opening and the edge rim are symmetrical about the container center axis.

38. Applicant is required to cancel the new matter in the reply to this Office Action.

***Response to Arguments***

39. Applicant's arguments filed 6/18/2009 have been fully considered but they are not persuasive.

40. On page 12 of the Remarks, applicant argues that Ball does not disclose a lever ring comprising a continuous flat web which radially outwardly merges into an edge rim of the lever ring. However, with reference to in re claim 1 above, Ball discloses a lever ring with a continuous flat web in as much as applicant has shown a lever ring in the Figs. of the instant application.

41. Also on page 12 of the Remarks, applicant argues that Fig. 21 of Ball teaches away from the claimed invention. However, the edge rim of the lever ring (166) is clearly shown in Fig. 21, and the "small" opening is not precluded by any language of the instant disclose apart from the new matter discussed above.

42. Applicant argues on page 14 of the Remarks that Ball cannot anticipate the claimed invention because of the upper surface 164. Aside for referring to new matter, examiner calls attention to the use of the term "comprising" which does not require the prior art to have those and only those claimed limitations in order to satisfy the language of the claim. Therefore it has been shown that the structure of Ball anticipates the claimed structure regardless of the extra components of Ball.

43. Applicant argues on page 15 of the Remarks that a difference in scale between the prior art and the claimed invention lead to different levels of performance. However, the amended claims are silent to scale of the claimed invention and therefore the prior art of record still anticipates the claimed subject matter.

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44. On page 15 of the Remarks applicant argues that 103 rejections made by the examiner are on claims which now depend from claims 16 and 23 are allowable.

However, claims 16 and 23 in the submitted claims are dependent on claim 1, with no dependant claims of their own.

### ***Conclusion***

45. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the

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requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is (571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, Off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Andrew T. Kirsch/

Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781